IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 5948 OF 2005

Digambar Gopal Vyas.... .... Petitioner.
Versus
District & Sessions Judge,
Kolhapur & Ors. ... ... Respondents.

Mr. M. S. Topkar for the Petitioner.

Mr. V.P.Malvankar, AGP for Respondent Nos.2 & 3.

CORAM : R. M. LODHA &
NARESH H. PATIL, JJ.

DATED : 7TH AUGUST, 2006.

P.C. :

Heard Mr. M. S. Topkar, Counsel for the petitioner and Mr. V. P. Malvankar, Assistant Government Pleader for respondent nos.2 and 3.

2. The petitioner has approached this Court under Article 226 of the Constitution of India with a prayer that the orders dated 29th July, 2004, 4th February, 2005, 18th March, 2005 and 23rd June, 2005 (Exhibits "D", "F", "H" and "I") be quashed and respondents be directed to consider the petitioner eligible for the promotional post of Superintendent, and accordingly, promote him with retrospective effect from the date on which the employees junior to him were promoted with all

consequential benefits.

3. The petitioner is Assistant Superintendent attached to the Civil Court, Senior Division, Kolhapur. During the inspection of the said Court by the District and Sessions Judge, Kolhapur, certain discrepancies were found in respect of the leave account and also the correspondence, orders, cash book. The petitioner was noticed of his lapses. He replied. Upon consideration of his reply, the District and Sessions Judge issued a stern warning for the lapses that were noticed during the course of inspection and that was recorded in his original service book. This order dated 29th July, 2004, as noted above, is under challenge. By the order dated 4th February, 2005, the District and Sessions Judge rejected the review application made by the petitioner for reviewing the order dated 29th July, 2004. Thereafter, the selection to the post of Superintendent in the District and Sessions Court, Kolhapur, took place. The case of two other candidates, namely, Smt. V. D. Gune and Shri R. D. Kamble were considered along with the case of the petitioner. Upon conclusion of the selection procedure, Smt. V. D. Gune was selected to the post of Superintendent, District and Sessions Court, Kolhapur. The petitioner made application dated 11th March, 2005 for reviewing the decision for appointment to the post of

Superintendent. By the order dated 18th March, 2005, the petitioner's application dated 11th March, 2005 came to be rejected. By communication dated 23rd June, 2005 the petitioner was intimated that in his service record the following adverse remarks have been recorded, "Warning is recorded in service book".

4. These four orders, which are referred above, are under challenge.

5. It is clear that the lapses were found in the work of the petitioner during the course of inspection. The reply of the petitioner was not satisfactory. In the circumstances, the District and Sessions Judge recorded warning for the said lapses in the service book of the petitioner. We find no justification to interfere with the said warning.

6. As regards the promotion to the post of Superintendent, suffice it to say that the case of the petitioner was considered along with two other eligible candidates, namely, Smt. V. D. Gune and Shri R. D. Kamble. The Assistant Government Pleader placed before us the proceedings of the Selection Committee. That shows that on assessment of petitioner's record and performance by the Committee was found far below Smt. V. D. Gune. Though, the petitioner is senior to Smt.

V. D. Gune, the service record of the petitioner is not unblemished. In this backdrop, if Smt. V. D. Gune was selected to the post of Superintendent, her selection cannot be said to suffer from any legal flaw warranting interference by this Court in exercise of extra ordinary jurisdiction.

7. Counsel for the petitioner lastly submitted that the petitioner having already suffered once for the warning recorded in the service record, the said warning should not be an impediment for consideration of petitioner's case in future forthe promotional post. Mr. V. P. Malvankar, Assistant Government Pleader assures us that as and when the case of the petitioner is considered in future for promotion, the said warning shall not come in his way. We accept his statement.

With the aforesaid observations, writ petition is dismissed.

Sd/-

(R. M. LODHA, J.)

Sd/-

(NARESH H. PATIL, J.)